IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Revision No.5767 of 2006
Date of Decision:24.08.2007

Gurtej Singh **.....Petitioner**

Vs.

Vijay Kumar **.....Respondent**

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. J.S.Brar, Advocate for the petitioner.

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The challenge in the present petition, filed under Article 227 of the Constitution of India is to the order dated 18.2.2003, denying the petitioner right to file written statement and order dated 26.7.2006 whereby the application filed by the petitioner for condonation of delay and permission to file the written statement was dismissed.

Briefly, the facts are that the respondent filed suit against the petitioner for recovery of a sum of Rs.4 lacs as principal and interest, on 5.8.2002. After service of the petitioner, he put in appearance in the Court on 25.11.2002. Thereafter, the case was adjourned five times for filing written statement and was finally fixed on 18.2.2003 and in the absence of the written statement, the petitioner was not allowed any further time to file the written statement and the case was fixed for the evidence of the plaintiff.

No one appeared on behalf of the respondent despite service and was ordered to be proceeded against ex-parte vide order dated May 7, 2007.

Counsel for the petitioner submitted that in fact the written statement was ready on 18.2.2003, however, the same could not be filed due to the fact that when the case was taken up for hearing, the counsel for the petitioner was held up in some other Court and in his absence, the order declining the right to file written statement was passed. The contention of the petitioner is supported by the fact that immediately on the same date, i.e., 18.2.2003, an application was filed for permission to place on record the written statement by condoning the delay in filing the same. The application was dismissed by the Court below, more than three years thereafter, on 26.7.2006 by passing the impugned order. Learned counsel for the petitioner submits that the petitioner was not at all interested in delaying

the proceedings as he had the written statement ready on 18.2.2003 and by the passing of the order declining the petitioner right to file the written statement and, thereafter, due to the pendency of the application filed by the petitioner for permission to file the same by condoning the delay, the trial of the case has unnecessarily been delayed for three years. Had the written statement filed by the petitioner been accepted on the same date, the trial of the suit might have been concluded.

As far as the period prescribed for filing the written statement under Order 8 Rule 1 CPC, is concerned, the same has been held to be directory in nature by judgments of Hon'ble the Supreme Court in **Kailash v. Nanhku and others,** 2005(2) RCR(C) 379 and **Surender Singh and others v. Omvati and others,** 2005(3) RCR(C) 786. It is further held therein that in exceptional circumstances the Court can extend time beyond 90 days for filing written statement so as to avoid injustice being caused to the parties.

In a recent judgment in **M/s R.N.Jadi & Brothers & others v. Subhashchandra**, 2007(2) RCR(C) 139, Hon'ble the Supreme Court considered similar issue wherein the facts were quite close to the facts in the present case. Trial Court in **R.N.Jadi's case (supra)** had granted time till a date which was beyond 90 days, however, written statement filed on that date was not accepted. Hon'ble the Supreme Court, while accepting the plea of the defendant in that case directed the trial court to take note of the written statement already filed by the defendant therein. The relevant observations of Hon'ble the Supreme Court are extracted below:-

> "8. Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the

mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justiciae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence-processual, as much as substantive"

If the facts of the case are examined in the light of the law laid down by Hon'ble the Supreme Court in series of judgments referred to above, it is evident that the delay in the present case in filing the written

statement is not so substantial that the same could not be condoned. The action of the petitioner is also found to be bonafide from the fact that the case was fixed for filing written statement on 18.2.2003 which was a date beyond 90 days. After passing of the order on that date, denying the petitioner right to file the written statement, an application along with the written statement was filed in the Court, on the same date, however, the application filed by the petitioner was rejected after about 3½ years. This has defeated the entire object for which amendment was made in Order 8 Rule 1 CPC. With pendency of the application even the trial of the suit did not proceed as, learned counsel for the petitioner informed that the case is still fixed for evidence of the plaintiff on 20.09.2007. Such a situation needs to be avoided.

Keeping in view above discussions and the interest of justice, I am inclined to accept the prayer made by the petitioner, accordingly, it is directed that written statement already filed by the petitioner on 18.2.2003 to be taken on record subject to payment of Rs. 1,000/- as costs to the respondent- plaintiff.

The revision is disposed of in the manner indicated above.

August 24, 2007 **(RAJESH BINDAL)**
renu **JUDGE**

(Refer to Reporter)